FEDERAL AND STATE REGULATION.

In the Minnesota Rate Case decision the Supreme Court does not call in question the findings of the Master or the conclusion of the court below as to the fact that the maximum rate allowed by the State of Minnesota upon intrastate business compelled the complainant railroads to reduce within that State their rates upon interstate business. The reductions ordered by the Minnesota Railroad Commission were substantial, and the court concedes that the roads were compelled to make reductions of interstate rates to competing near-by points in other States, not only to avoid unjust discrimination, but to keep the business. At the higher rates permitted by the Interstate Commerce Commission they would have lost the traffic, and their terminal and other property would have undergone a diminution in value. But the court holds nevertheless that the rate reductions made by the State were not sufficient to impose a direct and substantial burden upon interstate commerce, and that assuming that they are reasonable, it was unquestionably within the power of the State to establish them. In his decision restraining the application of the Minnesota rates, Judge Sanborn had said that their effect and necessary operation "was substantially to burden and directly to regulate the interstate commerce of the companies." The Circuit Court, therefore, is reversed.

The question here was altogether one of the degree to which the action of the State trenched upon the plenary power of Congress to regulate interstate commerce. Short of a direct interference and the imposition of a substantial burden upon interstate regulation, the power of the State was beyond question. The Supreme Court has repeatedly declared the principle that the Federal power and the State power are each exclusive within their proper jurisdiction. The State can exercise no control over matters under the domain of Federal law, and a Federal law relating to a subject of State jurisdiction would be absolutely void. These principles are not new, they are entirely clear, and they have guided the court in this decision. The railroads could have expected a different conclusion from the court only because of their belief that the State rates did, in fact, as

the court below decided, unduly interfere with Federal regulation, or because they were confiscatory, and upon both points their contention is denied. Hence their very natural disappointment, and hence, we suppose, the fall in stock market prices where it is perhaps too hastily assumed that this decision is very bad for the railroads.

Upon a further and more attentive consideration of the opinion of the court, the railroad interests of the country may be able to pick up some grains of comfort. The first assumption is that this decision leaves the populistic States free to work their will upon the railroads. It was from this very peril that the men of the railroads hoped to be delivered by the decision in this case, greatly preferring to take their chances under the single Federal jurisdiction than under that forty-eight States. But it is not at all true that the decision gives a new freedom to the States in their dealings with the railroads. On the contrary, the language of the court is eloquent in its warning to the States to keep well within the limits of reason and of prudence. In the first place, while the court will not set aside State rates that only indirectly and in a minor degree burden interstate regulation, it dwells with significant emphasis upon the fact that Congress has full power in this doubtful zone:

Where matters falling within the State power, as above described, are also, by reason of their relation to interstate commerce, within the reach of the Federal power, Congress must be the judge of the necessity of Federal action, and until Congress acts the States may act.

The authority of Congress is paramount and "in response to conviction of national need" it may "displace local laws by substituting laws of its own." That is the first warning to the States, and we should say it is one from which the railroads should derive great comfort.

The second warning is the familiar one that rates that do not allow a fair return will be considered confiscatory and set aside. Private property put to public use "rests secure under the constitutional protection which extends not merely to the title, but to the right to receive just compensation for the services given to the public."

In States where the radical and adventurous spirit prevails,

where parties or politicians seek their profit by harassing the corporations, there may be some trouble ahead for the railroads. The court has pointed to their means of defense, it has given them assurance of adequate protection. And in the period upon which we have now entered, where definite principles of public regulation have been laid down and applied, and after a long series of enlightening decisions have made clear the rights both of the public and of corporations that serve them, it is to be hoped, it is practically certain, that very soon the people in all of the States will perceive the folly, the wickedness, the waste, the great loss and injury to themselves and all their interests of policies of wanton persecution of corporations. Undoubtedly the time is past when very high returns from railroad investments can be hoped for. The setting up of machinery for careful regulation and the establishing of the principle of reasonableness in rates have practically done away with great speculative opportunities in such investments. It would be sheer blindness to ignore the offsetting advantage of greater security. Immune from confiscatory rate-making, protected against the demands of shippers for favors and rebates, delivered from the free-pass burden, and brought altogether within the domain of the law, the railroads have acquired a stability of rights and of position that in the long run will be found to be worth a great part of the privileges and immunities they have lost.

Great interest attaches to the principle of valuation negatively set up in the opinion of the court. The Master's finding adopted by the court below really followed the principles laid down by the Minnesota Commission itself in 1906. It then declared that "an estimate of the cost of reproducing them new is deemed essential as the prime factor," and in respect to their real estate it was laid down that the estimate was to be made "as though the existing railways were not constructed and the regions through which they now extend were occupied, as now, by the settlements, improvements, and varied industries." This principle the Supreme Court sets aside as inadmissible. The attempt to value in that way would, it says, become in a large part "mere speculation." In determining valuation as the basis of earning power any speculative increment over the invested amount beyond the value of similar property owned by others is not to be allowed.

In the case of the Minneapolis & St. Louis Railroad a most interesting discrimination is made. Its return for Minnesota business of 4.4 per cent. on the estimated value of property in that State in one year and of 3.5 per cent. in another, and of less than 3.7 in still another year, is held to be inadequate, and the court holds that the Minnesota rates would not permit a fair return to this company. The decree of the court below, therefore, so far as it rests on the confiscatory character of the rates applied to the Minneapolis & St. Louis Railroad Company is affirmed, with the right to the State Commission to issue further orders or decrees if by reason of a change in conditions the State rates should be found sufficient to yield a reasonable return to the company. This manifestly changes the outlook for weak companies under Federal or State regulation. A discrimination is set up, an exception allowed, and the privilege of exacting higher rates is granted. That privilege, however, when exercised under competitive conditions would be of little value.

—*New York Times.*

THE FEDERAL EMPLOYERS' LIABILITY ACT.

I. The General Power of Congress to Regulate the Relation of Master and Servant.

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  4. When Railroad or Employee Engaged in Interstate Commerce.